

**SHARON ANN STALEY**  
Claimant

**OSBORNE INDUSTRIES, INC.**  
Respondent

**ST. PAUL FIRE & MARINE INSURANCE  
COMPANY**

Docket No. 242,143

Claimant, a long-term employee with respondent, regularly performed tasks which required that she bend and stoop on a regular basis in her job. Claimant alleges this bending and stooping aggravated her back condition which was diagnosed as mild bulging disc at L4-5 and degenerative disc disease L5-S1, resulting in a decompression and lateral fusion by Neonilo A. Tejano, M.D., at those same levels. Claimant attributes her symptoms to her bending and stooping at work. However, medical records placed into evidence from Dr. James Park, claimant's chiropractor, show a several-year history of back pain, stemming from multiple activities at home as well. These activities include picking up a bowling ball, sweeping, helping lay carpet, stripping chairs, raking leaves, bending over to pick up the paper and, on more than one occasion, stepping off of curbs. Medical records

from Dr. Dannefer, another chiropractor, indicate low back, upper back and neck problems associated with claimant assisting her husband while sheetrocking at home.

Claimant alleges she advised her immediate supervisor, David Slothower, as well as his supervisors, Lawrence A. Eck, the assembly supervisor, and Mike Shurr, the RTM department manager, of her problems.

Respondent's representatives, who were deposed in this matter, contradict the claimant's testimony. Both Mr. Shurr and Mr. Eck testified by deposition that claimant had never advised them that her back problems were related to the bending and stooping activities at work. Mr. Eck does acknowledge that claimant, at one time, discussed whether her back problems may be related to a fall which occurred in December of 1996 while claimant was working in RIM. However, claimant made no claim for workers' compensation benefits from that fall and obtained no medical treatment after that fall.

Mr. Nuss did not testify, but his affidavit was provided for consideration. In the affidavit, Mr. Nuss denies being advised that claimant ever suffered a work-related accident. Claimant advised Mr. Nuss on or about October 10, 1998, that she would be off work for a period of time to undergo back surgery. She did not, however, advise him at that time of a work-related connection to the back surgery.

Claimant testified that, on her last day worked on October 30, 1998, she asked Steve Nuss, who was at that time the personnel manager for respondent, if the upcoming surgery could be filed under workers' compensation. Claimant testified that Mr. Nuss advised her it could not be filed under workers' compensation. When asked what specific injury she discussed with Mr. Nuss, claimant testified she mentioned the December 1996 fall, but did not mention the microtrauma activities associated with her ongoing work duties.

Claimant acknowledges asking Dr. Tejano if this matter would be work-related and fileable under workers' compensation when she met him on September 28, 1999. Dr. Tejano's notes of that date do indicate that claimant indicated no history of injury but that she does do a lot of lifting and bending at work. Dr. Tejano advised her that, in his opinion, this would not be a work-related injury and, therefore, not fileable under workers' compensation.

No accident report was ever filed by claimant for the December 1996 fall nor for the microtrauma injuries through her last day worked of October 30, 1998. Claimant left work on October 30, 1998, and took family medical leave for twelve weeks. At the end of the twelve-week period, claimant was still not able to return to work with respondent. Therefore, her employment with respondent was terminated on February 9, 1999. Claimant testified that this termination angered her and her husband, and it was at this time that they decided to pursue a workers' compensation claim. After contacting an attorney,

written claim was submitted to respondent on or about February 19, 1999, with the Application for Hearing (E-1) being filed March 5, 1999.

K.S.A. 44-520 obligates the claimant to provide notice of accident to the employer within ten days after the date of accident, giving time, place and particulars of the accident. Actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary.

Respondent acknowledges being notified of a December 1996 slip and fall. However, no claim was ever pursued for that injury. The injury in contention herein involves microtrauma injuries allegedly suffered by claimant through her last day worked of October 30, 1998. Claimant alleges that she discussed her physical problems with her various supervisors; however, the supervisors all deny claimant advising them that she was suffering any type of work-related injury. The medical records do occasionally elude to the lifting and bending at work, but also on many occasions discuss various physical traumas suffered at home working both in the house and in the yard.

The very general conversation with Mr. Nuss on October 30, 1998, regarding the December 1996 injury would not constitute notice of microtrauma injuries suffered during her daily activities at work. Mr. Nuss denies being advised by claimant of any ongoing microtrauma activities, and claimant acknowledges, although in somewhat conflicting testimony, that she never told her supervisors that her back problems stemmed from the repeat bending and lifting activities at work. Claimant also acknowledged that she told no one in a supervisory position that the upcoming surgery was related to any work-related activities or injuries. All of claimant's medical bills were paid under Blue Cross/Blue Shield. The decision by claimant to file a workers' compensation claim did not occur until after the Blue Cross/Blue Shield policy expired at the end of her twelve-week family medical leave period. It was only at that time claimant elected to pursue a workers' compensation claim.

In reviewing the evidence, the Appeals Board finds the testimony of respondent's representatives to be most credible, including the affidavit of Mr. Nuss. The Board, therefore, finds that claimant has failed to carry her burden of proving that she provided timely notice to respondent of the series of accidents through her last day worked. Therefore, the Order by the Administrative Law Judge denying claimant benefits in this matter should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated November 8, 1999, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2000.

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BOARD MEMBER

c: Patrik W. Neustrom, Salina, KS  
Scott J. Mann, Hutchinson, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director